

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

Donald Jackson  
3723 North 16th Street  
Philadelphia, PA 19140

**FILED**  
APR 22 2014  
MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

CIVIL ACTION

Plaintiff,

No.

14 2310

v.

JURY TRIAL DEMANDED

Gaudenzia Inc.  
106 West main Street  
Norristown, PA 39401

Defendant.

**CIVIL ACTION COMPLAINT**

Plaintiff, Donald Jackson, (hereinafter referred to as "Plaintiff), by and through his undersigned counsel,  
hereby avers as follows:

**I. Introduction**

1. Plaintiff has initiated this action to redress violation by Gaudenzia Inc. (hereinafter referred to as "Defendant") of the Family and Medical Leave Act (FMLA).

**II. Jurisdiction and Venue**

2. This action is initiated pursuant to the Family and Medical Leave Act (FMLA). This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny.

J. Grin  
(1)  
4/22/14

3. The United States District Court for the Eastern District of Pennsylvania has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims arise under laws of the United States.
4. Venue is Properly laid in the District pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), because Defendant resides in and/or conducts business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in the judicial district.

### **III. Parties**

5. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
6. Plaintiff is an adult with an address as set forth above.
7. Defendant provides addiction treatment and recovery services.
8. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein the course and scope of their employment with and for the benefit of Defendant.

### **IV. Factual Background**

9. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
10. Plaintiff worked for Defendant for approximately two years.
11. Plaintiff worked for Defendant as a Drug and Alcohol Peer Specialist.
12. Plaintiff voluntarily resigned on August 28, 2013.
13. The reason for resignation by Plaintiff was the threat of termination due to attendance.
14. Plaintiff did not resign for any reason other than the threat of termination.
15. Plaintiff was diagnosed with asthma, high blood pressure, chronic obstructive pulmonary disease (COPD) and arthritis.
16. Plaintiff missed periodic days from work in mid 2012 - mid 2013.
17. Plaintiff missed most of his periodic days from work in mid-2012 through mid-2013 due to severe asthma attacks and/or other reason related to his asthma/COPD.

18. When Plaintiff first filed for short term disability, it was denied.
19. Plaintiff filed for short term disability on May 25, 2013.
20. Defendant approved Plaintiffs short term disability.
21. Defendant has a neutral attendance policy and utilized the policy during the course and scope of Plaintiffs employment.
22. Defendant counted Plaintiffs absences prior to the granting of short term disability, that were related to complications due to asthma, in determining that Plaintiff violated Defendant's neutral attendance policy.
23. Plaintiff was harassed by the Human Resources Department asking when would he return to work, and also stating that his FMLA had run out.
24. Following the expiration of FMLA, Plaintiff was advised that if there was any more absenteeism he would be terminated.
25. Plaintiff's health benefits were terminated by Defendant of August 31, 2013.
26. Plaintiff used all of his allotted sick and vacation time, mostly due to reasons related to his asthma.

**First Cause of Action**

**Family and Medical Leave Act**

**(Interference & Retaliation Violations)**

27. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
28. Plaintiff was clearly an eligible employee under the definitional terms of the Family and Medical Leave act, 29 U.S.C. § 261 l(2)(a)(i)(ii).
29. Plaintiff requested leave from the Defendant, his employer, with whom he had been employed for at least twelve (12) months pursuant to the requirements of 29 U.S.C.A. § 261 l(2)(i).
30. Further, Plaintiff had at least 1,250 hours of service with Defendant during the prior twelve (12) months.

31. Defendant is engaged in an industry affecting commerce and employs fifty (50) or more employees for each working day during each of the twenty (20) or more calendar work weeks in the current or proceeding calendar year, pursuant to U.S.C.A. § 2166(4)(A)(i).
32. Plaintiff was entitled to receive leave pursuant to U.S.C.A. § 2612(a)(1) for a total of twelve (32) work weeks of leave.
33. Defendant violated multiple sections of the FMLA by impermissibly counting absences towards a neutral attendance policy that were FMLA-qualifying.
34. Defendant further violated the FMLA by failing to provide Plaintiff with an individualized notification of his FMLA rights and obligations when he was missing periodic days from work in 2012-2013, and Defendant improperly designated absences as unexcused.
35. Due to Defendant's failure to provide individualized notice and the fact that Plaintiff would have missed less than 12 weeks of work within 1 year if properly notified and if his absences were properly designated as FMLA-qualifying, Defendant has violated the FMLA.
36. Defendant further failed to engage in a good-faith interactive process with Plaintiff about his need(s) for intermittent leave.
37. Defendant's actions as aforesaid constitute interference violations of the FMLA.
38. Defendant also unlawfully retaliated against Plaintiff for requesting a medical leave that qualified for FMLA protection and for requiring same.

WHEREFORE, Plaintiff prays that this Court enter an order providing that:

- A. Defendant is to be prohibited from continuing to maintain its illegal policy, practice, or custom of discriminating against employees based on their use of the FMLA, and is to be ordered to promulgate an effective policy against such discrimination and to adhere thereto;
- B. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for

Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, medical and other benefits, training, promotions, pension, and seniority. Plaintiff should be accorded those benefits illegally withheld from the date he first suffered discrimination at the hands of Defendant until the date of verdict;

- C. Plaintiff is to be awarded liquidated damages as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct, and to deter Defendant or other employers from engaging in such misconduct in the future;
- D. Plaintiff is to be accorded any and all other equitable and legal relief as the Court deems just, proper and appropriate;
- E. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law;
- F. Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth in applicable federal law;
- G. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted, BOWMAN &  
PARTNERS, LLP

By:



Michael A. Bowman, Esquire  
1600 Market Street  
Philadelphia, PA 19103  
(215)391-4300

Dated: April 21, 2014

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 Donald Jackson

**DEFENDANTS**  
 Gaudenzia, Inc.

 (b) County of Residence of First Listed Plaintiff Philadelphia  
 (EXCEPT IN U.S. PLAINTIFF CASES)

 County of Residence of First Listed Defendant Montgomery  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

 (c) Attorneys (Firm Name, Address, and Telephone Number)  
 Michael A. Bowman, Esq.  
 Bowman & Partners LLP, 1600 Market St., Philadelphia, PA 19103  
 (215) 391-4300

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify):
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 29 U.S.C. § 2061

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

 DATE  
 04/21/2014

SIGNATURE OF ATTORNEY OF RECORD



APR 22 2014

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

PD

14-cv-2310

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 3723 North 16th Street, Philadelphia, PA 19140

Address of Defendant: 106 West Main Street, Norristown, PA 19401

Place of Accident, Incident or Transaction: Pennsylvania  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: Judge Date Term

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously?
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or action in this court?
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case terminated action in this court?
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed?

Waiting

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones-Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☒ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

Summons too

ARBITRATION CERTIFICATION

(Check Appropriate Category)

APR 22 2014

I, Michael A. Bowman, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: April 21, 2014

Attorney-at-Law

81762

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: April 21, 2014

Attorney-at-Law

81762

Attorney I.D.#



PD

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

Donald Jackson

v.

Gaudenzia, Inc.

:  
:  
:  
:  
:

CIVIL ACTION

**14 2310**

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

April 21, 2014**Date**Michael A. Bowman**Attorney-at-law**Donald Jackson**Attorney for**(215) 391-4300**Telephone**(215) 391-4350**FAX Number**mbowman@bowmanltd.com**E-Mail Address**

APR 22 2014